

Applicant : Scott, Walter
Appl. No. : 10/644,105
Examiner : Gehman, Bryon
Docket No. : 14232.4001

Amendments to the Drawings

Attached herewith is replacement drawing sheet 1 of 5 which shows Fig. 1.

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REMARKS

Prior to this amendment, claims 1-22 were pending in this application. Claims 17, 19 and 22 have been cancelled and new claims 23-24 have been added. Claims 1-5, 10-16, 18 and 20-21 have been amended. After this amendment, claims 1-16, 18, 20-21 and 23-24 are pending. Applicant submits that the application is in condition for allowance for the following reasons.

Objection to Figure 1

The Examiner objected to Figure 1 for showing the lumen 38 in two dimensions, but the rest of the figure in three dimensions. Applicant submits revised Figure 1 in which the components are illustrated in three dimensions, thereby overcoming this objection. To make Figure 1 more consistent with the description in the specification, applicant added lines to complete the illustration of the top lid 22, bottom lid 24, and side walls of subcontainer 36. Specifically, applicant added the bottom edge of the top lid 22, the top edge of bottom lid 24, and the side walls of subcontainer 36 so that the side walls of subcontainer 36 are visibly separate from the side walls of the body 20. None of these additions to Figure 1 constitute new matter because they were disclosed in the specification (see, e.g., paragraph 0009) and partially illustrated in originally filed Figure 1.

Rejection Under Section 102(b)

The Examiner rejected claims 1, 2, 5, 6, and 8 under Section 102(b) over Halleck U.S. Patent No. 3,314,194, reasoning that the limitation in the claims to the hydrogel was “imaginary, as ‘adapted’ does not include or define structure, only capability.” Accordingly, applicant has amended the independent claims 1 and 10 to positively recite the hydrogel so it is no longer an imaginary limitation. Thus, the Section 102(b) rejection over Halleck has been overcome for at least this reason.

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Rejection Under Section 103(a)

The Examiner rejected claims 1-6, 8-18, 20 and 22 under Section 103(a) as being obvious over Dahlson (2003/0047474) in view of McKenzie U.S. Patent No. 3,973,355. In making this rejection, the Examiner acknowledged that while Dahlson mentions an aqueous gel, Dahlson lacks the claimed tapered lumen and resorted to Figures 10 and 11 of McKenzie to find use of a tapered lumen 30 or 20 to provide access to a hydrogel. However, the claims as amended differ significantly from Dahlson and McKenzie.

Claims 1 and 10 recite an inner container completely within an outer container, where the outer container has a removable top lid and a removable bottom lid, where the inner container also holds a hydrogel, and there is a lumen in the top of the inner container through which the roots of the live plant gain access to the hydrogel while at the same time hindering the hydrogel from leaking out of the inner container. Applicant discovered advantages to an outer container that has both a removable top lid and a removable bottom lid. Applicant discovered that during manufacturing, damage to a live plant (and in particular its leaves) is reduced by inserting the inner container holding the plant bottom first through the top opening of the outer container. By contrast, a customer will damage the live plant less if he removes the plant from the bottom opening of the outer container. Thus, there is a real advantage to having both a removable top lid (for inserting the plant) and a removable bottom lid (for removing the plant). The cited prior art does not disclose an inner container completely within an outer container with removable top and bottom lids, much less the entire combination of recited elements including the hydrogel in the inner container and a lumen in the top of the inner container through which the roots of the live plant gain access to the hydrogel

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while at the same time hindering the hydrogel from leaking out of the inner container. These reasons alone suffice to distinguish the claims as amended over the cited prior art.

There are still additional reasons why the claims distinguish over the cited prior art. First, McKenzie fails to disclose the claimed inner container within an outer container, a hydrogel in the inner container, a removable top lid, a removable bottom lid, and a second lumen in the top of the inner container through which the roots of the live plant gain access to the hydrogel while at the same time hindering the hydrogel from leaking out of the inner container.

Second, McKenzie's lumen 30 or 20 is provided in a solid foam block, not in the top of a hollow inner container.

Third, the purpose of McKenzie's lumen is to hold a plant steady, whereas applicant's lumen serves to give the roots of the live plant access to the hydrogel while at the same time hindering the hydrogel from leaking out of the inner container.

Fourth, Dahlson is directed to a single folding container having a plurality of elongate channels for holding a plurality of flowers. See Figure 1. Dahlson does not disclose an outer container having a removable top lid and a removable bottom lid or a second lumen that provides access to the hydrogel and yet at the same time hinders the hydrogel from leaking out of the inner container.

Fifth, Dahlson and McKenzie cannot be properly combined. McKenzie uses a solid foam block and thus, teaches away from the use of a hydrogel that can leak from one container into another container. McKenzie teaches the use of a tapered hole in a solid foam block to hold the flower, but applying this teaching to a hydrogel would result in creating a tapered hole in the hydrogel, not in a lid of an inner container.

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Similarly, Halleck is directed to a container 10 that has a hood or dome 40. Thus, Halleck does not disclose an inner container within an outer container of the claims. If the hooded portion is considered to be another container, the bottom container 10 of Halleck is not completely within another container, as required by the claims. In any event, as recognized by the Examiner, Halleck further lacks a hydrogel. Nor does Halleck disclose a removable top lid, much less the unique claimed combination of a dual container with the removable top lid, removable bottom lid, a hydrogel and a second lumen that provides access to the hydrogel and yet at the same time hinders the hydrogel from leaking out of the inner container.

Therefore, none of the cited prior art disclose every limitation required by the claims. If the Examiner attempts to combine multiple references to cover all the claim limitations, such would be the use of impermissible hindsight to reconstruct the claims.

Applicant submits that the dependent claims are patentable for at least the same reasons their independent claims are patentably distinct from the prior art. Thus, applicant's silence as to the Examiner's arguments regarding the dependent claims should not be considered applicant's acquiescence to the Examiner's views.

Some of the claim amendments are not narrowing amendments because, for example, claim 1 no longer requires a tapered second lumen and claims 10-22 no longer recite a "closed" container in the preamble.

Rejection Under Section 112, Second Paragraph

The Examiner rejected claims 10-16 under Section 112, second paragraph, as being indefinite because it was unclear whether the "lumen" in claims 11-12 referred to the lumen in the body or the lumen in the divider and because the "tapered lumen" in claims 13-16 lacked antecedent basis.

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Applicant has amended claims 1 and 10 to make a clear distinction between the main/body lumen and the second lumen, thereby overcoming the indefiniteness rejection over claims 11-12. Likewise, applicant has amended claim 12 to recite that the second lumen is a tapered lumen, from which claims 13-16 have their antecedent basis for the term "tapered lumen." Therefore, the application and claims fully satisfy Section 112.

CONCLUSION

Applicant submits that the detailed amendments to the claims and Figure 1, and arguments thereto, place the application into condition for allowance. Prompt and favorable action on the merits of the claims is earnestly solicited. Should the Examiner have any questions or comments, the undersigned can be reached at (949) 567-6700.

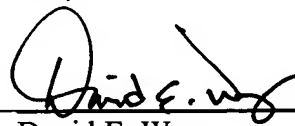
The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 15-0665.

Respectfully submitted,

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By:



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